

### **REMARKS**

This responds to the Office Action mailed on December 13, 2007.

Claims 1-18 and 38 are amended. As a result, 38 claims are now pending in this application. Amended claims 1-18, and 38 are supported in the original specification at FIG. 18.

#### **§101 Rejection of the Claims**

Claims 1-18 and 38 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The preambles of claims 1-18 and 38 have been amended to claim statutory subject matter. The preamble of amended claims 1-18 are now state: "A computer system." The preamble of amended claim 38 now states: "A machine-readable medium, including at least one of solid-state memories, optical media, and magnetic media, comprising instructions, which when implemented by one or more machines, cause the one or more machines to perform the following operations." Applicants believe that amended claims 1-18 and 38 are compliant with the requirements of 35 U.S.C. § 101.<sup>1</sup>

#### **§112 Rejection of the Claims**

Claim 38 was rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Claim 38 has been amended to address a typographical error. Applicants believe that amended claim 38 is compliant with the requirements of 35 U.S.C. § 112.

#### **§103 Rejection of the Claims**

Claims 1, 7-8, 11-12, 14, 18-19, 25-26, 29-30, 32 and 36-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. (U.S. Publication No. 2003/0208497 A1) in view of Masters et al. (U.S. 7,051,098). Applicants respectfully traverse. MPEP 2143.02 states:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. (emphasis added)

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<sup>1</sup> See e.g., *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995) (a computer readable medium is *per se* statutory subject matter)

In view of MPEP 2143.02, Witter et al. cannot be combined with Masters et al.<sup>2</sup> for such a modification would render Witter et al. unsatisfactory for its intended purpose.

Witter et al. is a “Customer Relationship Management System”<sup>3</sup>, that states among other things:

A program for processing contacts from consumers includes a plurality of software routines activated in a sequence corresponding to common steps performed when processing a contact, including an identification routine for generating an identification screen to enable an operator to input information identifying a consumer contacting the operator to communicate an issue, a look-up routine for searching a database containing a plurality of issue histories to identify an issue history associated with the consumer, and a subject routine for generating a subject screen to enable the operator to input information relating to the issue. A product routine is also included that generates an issue summary containing the issue information for storage in the database as part of the issue history associated with the consumer. The program also includes an activity routine for generating an activity screen to enable the operator to input information describing an activity to address the issue. The issue may be stored in the database in association with the operator or another party responsible for completion of the issue summary.<sup>4</sup> (emphasis added)

By contrast, Masters et al. states a:

The Resource Management Architecture, which was and is being developed by the Naval Surface Warfare Center—Dahlgren Division (NSWC-DD), provides capabilities for monitoring hosts, networks, and applications within a distributed computing environment. Moreover, the Resource Management Architecture provides the capability of dynamically allocating, and reallocating, applications to hosts as needed in order to maintain user-specified system performance goals.<sup>5</sup> (emphasis added)

<sup>2</sup> To support her obviousness rejection, the Examiner states: “Witter did not disclose the prioritization engine automatically to prioritize a response activity, responsive to the issue, utilizing the performance data regarding the reporting entity.” With Witter et al., the Examiner seeks to combine Masters et al. for according to the Examiner:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Witter to include the prioritization engine automatically to prioritize a response activity responsive to the issue, utilizing the performance data regarding the reporting entity in order to have a user-friendly technique with which specify quality of service requirements for each host, each application, and the network in which the hosts are connected. (emphasis added) See Office Action dated December 13, 2007 (herein after “Office Action”), pg. 6.

<sup>3</sup> Witter et al., Title.

<sup>4</sup> *Id.*, Abstract.

<sup>5</sup> Masters et al., Col. 4, lines 9-13.

where:

6) based on operator changes to application system priorities, whether and where new applications need to be started or whether and which existing applications need to be shut down. FG5--Application (Resource) Control.<sup>6</sup> (emphasis added)

To make Witter et al. combinable with Masters et al., Witter et al. would need to be modified to make decisions regarding “whether and where new applications need to be started,”<sup>7</sup> and not, for example, with regard to an “issue history associated with a customer.”<sup>8</sup> Accordingly, this modification would render Witter et al. “unsatisfactory for its intended purpose.”<sup>9</sup>

As claims 7-8, 11-12, 14, and 18 directly or indirectly depend upon claim 1, claims 7-8, 11-12, 14, and 18 are also allowable.<sup>10</sup> Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

Claim 19 states a limitation of:

automatically prioritizing a response activity, responsive to the issue, utilizing the performance data regarding the reporting entity.

For the reasons outlined above with respect to claim 1, the combination of Witter et al. and Masters et al. renders Witter et al. “unsatisfactory for its intended purpose.”<sup>11</sup> Accordingly, claim 19 is allowable. As claims 25-26, 29-30, 32 and 36 directly or indirectly depend upon claim 19, claims 25-26, 29-30, 32 and 36 are also allowable.

<sup>6</sup> Masters et al., Col. 8, lines 10-34. *See generally* Masters et al.: “Each application system and subsystem can be assigned a priority which is used at run-time to determine the relative importance of applications running in the distributed environment.” (emphasis added) Masters et al., Col. 15, lines 40-43. And again, “(5) what applications should be started, stopped, or moved in response to application system priority changes,” (emphasis added) Col. 18, lines 34-37.

<sup>7</sup> *Id.*

<sup>8</sup> Witter et al., Abstract.

<sup>9</sup> MPEP 2143.02.

<sup>10</sup> *See generally* MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

<sup>11</sup> *See supra*, pg. 11.

Claim 37 states a limitation of:

the prioritization means for prioritizing a response activity, responsive to the issue, utilizing the performance data regarding the reporting entity

For the reasons outlined above with respect to claim 1, the combination of Witter et al. and Masters et al. renders Witter et al. “unsatisfactory for its intended purpose.”<sup>12</sup> Accordingly, claim 37 is allowable.

Claim 38 includes a limitation that states:

automatically prioritized a response activity, responsive to the issue, utilizing the performance data regarding the reporting entity

For the reasons outlined above with respect to claim 1, the combination of Witter et al. and Masters et al. renders Witter et al. “unsatisfactory for its intended purpose.”<sup>13</sup> Accordingly, claim 38 is allowable.

Claims 2-6, 13, 20-24 and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Masters et al. and further in view of Khanolkar et al. (U.S. Publication No. 2007/0234426 A1). Applicants respectfully traverse. For the reasons outlined above with respect to claim 1, 19, and 37 the combination of Witter et al. and Masters et al. renders Witter et al. “unsatisfactory for its intended purpose.”<sup>14</sup> Further, the addition of Khanolkar et al.<sup>15</sup> does not address the problem of combining Witter et al. and Masters et al. Claim 1 is allowable. As claims 2-6, and 13 directly or indirectly depend upon claim 1, claims 2-6 and 13 are also allowable. Moreover, claim 19 is allowable. As claims 20-24 and 31 directly or indirectly depend upon claim 19, claims 20-24 and 31 are also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>15</sup> See Khanolkar et al. “Comprehensive Security Structure Platform for Network Managers,” Title.

Claims 9 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Master et al. and further in view of Kaplan (U.S. 7,155,410 B1). As stated above with respect to independent claims 1, and 19 the combination of Witter et al. and Masters et al. renders Witter et al. "unsatisfactory for its intended purpose."<sup>16</sup> Moreover, the addition of Kaplan et al.<sup>17</sup> does not address the problem of combining Witter et al. and Masters et al. As claims 9 and 27 directly or indirectly depend upon claim 19, claims 9 and 27 are also allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 10, 14 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Masters et al. and further in view of Hashem et al. (U.S. Publication No. 2003/0041291 A1). Applicants respectfully traverse. As stated above with respect to independent claims 1, and 19 the combination of Witter et al. and Masters et al. renders Witter et al. "unsatisfactory for its intended purpose."<sup>18</sup> Further, the addition of Hashem et al.<sup>19</sup> does not solve this problem. As claims 10 and 14 directly or indirectly depend upon claim 1, claims 10 and 14 are also allowable. As claim 28 directly or indirectly depends upon claim 19, claim 28 is also allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 15-17 and 33-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Masters et al. and further in view of Robinson et al. (U.S. 5,734,838). As stated above with respect to independent claims 1, and 19 the combination of Witter et al. and Masters et al. renders Witter et al. "unsatisfactory for its intended purpose."<sup>20</sup> Moreover, the addition of Robinson et al.<sup>21</sup> does not address this problem. As claims 15-17

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<sup>16</sup> See *supra* pg. 11.

<sup>17</sup> Kaplan et al. states a "System and method for forecasting information using collective intelligence from diverse sources." Title.

<sup>18</sup> See *supra* pg. 11.

<sup>19</sup> Hashem et al. states a "Method and System for Tracking Errors." Title.

<sup>20</sup> See *supra* pg. 11.

<sup>21</sup> Robinson et al. states a "Database computer architecture for managing an incentive award program and checking float of funds at time of purchase." Title.

directly or indirectly depend upon claim 1, claims 15-17 are also allowable. As claims 33-35 directly or indirectly depends upon claim 19, claims 33-35 are also allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

*Reservation of Rights*

In the interest of clarity and brevity, Applicants may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicants reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicants respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (408) 278-4057 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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4/14/08

By



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of April 2008.

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